

LAURA MAE HOPPER

IBLA 80-384

Decided June 26, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring unpatented lode mining claims abandoned and void. N MC 41510-41513.

Affirmed.

1. Federal Land Policy and Management Act of 1976:
Recordation of Affidavit of Assessment Work or Notice
of Intention to Hold Mining Claim -- Mining Claims:
Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to December 31 of each year following the calendar year in which the claim was located. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

APPEARANCES: Laura Mae Hopper, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Laura Mae Hopper appeals from the decision, dated January 24, 1980, wherein the Nevada State Office, Bureau of Land Management (BLM), declared the Laura, Laura No. 1, Laura No. 2, and Laura No. 3 lode mining claims abandoned and void for failure to file prior to December 31, 1979, an affidavit of assessment work or notice of intention to hold the above unpatented mining claims. The subject claims were located November 4, 1978, and were recorded with BLM on November 20, 1978, under serial Nos. N MC 41510 through 41513.

The recording provisions of section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), require the owner of an unpatented mining claim located after October 21, 1976, to file prior to December 31 of each year following the calendar year in which the claim was located either a notice of intention to hold the mining claim or an affidavit of assessment work performed thereon. The failure to file such instruments as required shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. 43 U.S.C. § 1744(c) (1976).

Appellant asserts she had written to BLM in November 1979, asking for the identifying numbers assigned to her mining claims, so that she could file the appropriate notice of intention to hold the claims, but she had not received any reply from BLM. BLM states that it has no record of receiving such an inquiry from appellant. A subsequent letter from appellant stating her intention to hold the subject mining claims was received by BLM on January 3, 1980.

[1] Failure of this claimant to comply with the regulations governing recordation of information relating to unpatented mining claims must result in a conclusive finding that the claims have been abandoned. Section 314(c) FLPMA, supra; Edwin Forsberg, 47 IBLA 235 (1980). This Board has authority to waive the statutory requirements.

Appellant may, however, relocate her claims and file the notices required by 43 CFR 3833.1, subject to any intervening rights of third parties and assuming the land remains open to mineral location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

